

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 03-MSRC-008**

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

**KENNETH HAMILTON
And SIMON RATLIFF**

RESPONDENTS

FINAL ORDER REGARDING KENNETH HAMILTON

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Kenneth Hamilton, and the members of the Commission having reviewed the Settlement Agreement filed on June 29, 2003 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Administrative Hearing, scheduled for October 9, 2003 is **CANCELED**;
3. The Respondent, Kenneth Hamilton's Underground Mine Foreman's Certificate, # A-**-**, issued by the Commonwealth of Kentucky, shall be placed on **PROBATION** for a period of two (2) years, effective July 21, 2003;
4. During said probationary period, if Respondent Hamilton willfully violates any state or federal mine safety laws or regulations, the KDMM may file

a motion with the Mine Safety Review Commission to revoke certificate # A-**-
** for the remainder of the two (2) year probationary period;

5. The Respondent shall complete eight (8) hours of safety training, provided by KDMM's Pikeville District Office, on or before September 19, 2003 (60 days from the signature of the Settlement Agreement);

6. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

7. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Hamilton, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);

8. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Kenneth Hamilton, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and

9. **Appellate rights:** Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of

record in this proceeding.

Entered this _____ day of August 2003.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING KENNETH HAMILTON was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this _____ day of August 2003:

KENNETH HAMILTON

TEABERRY KY *****

Respondent

And by regular mail, postage pre-paid to:

SIMON RATLIFF

LOOKOUT KY *****

Respondent

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS)
)
Complainant)
)
v.) Administrative Action No. 03-MSRC-008
)
KENNETH HAMILTON & SIMON RATLIFF)
)
Respondents)
)

SETTLEMENT AGREEMENT BETWEEN KDMM & KENNETH HAMILTON

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”; “the Department”) and Respondent Kenneth Hamilton (“Hamilton”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him, Hamilton hereby admits to the allegations and violations set forth in paragraphs 8-9 of KDMM’s Complaint against him, and hereby agrees to the **PROBATION OF HIS UNDERGROUND MINE FOREMAN’S CERTIFICATE (# A-**-**) FOR A PERIOD OF TWO (2) YEARS**, effective upon the signing of this Settlement Agreement by both parties. In addition, Hamilton agrees to take eight (8) hours of safety training - provided by the Department’s Pikeville District office - within sixty (60) days of the signing of this Settlement Agreement by both parties or prior to returning to work in the mines, whichever occurs first.¹

¹ Said safety training is in addition to Hamilton’s annual retraining requirement.

During said period of probation, Hamilton agrees to comply with all state and federal mine safety and health laws and regulations. The willful violation by Hamilton of any of said laws or regulations may result in the Department filing a motion with the Mine Safety Review Commission (“the Commission”) to revoke Hamilton’s underground mine foreman’s certificate for the remainder of the two (2) year probationary period.² In that case, Hamilton would be entitled to a hearing before the Commission on the allegations against him.

Hamilton further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a “first offense”, as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a “subsequent offense” as defined at 805 KAR 8:010, Section 1 (13).

Hamilton understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Hamilton further states that he has carefully read the Settlement Agreement - or has had it read to him - and has carefully considered this Settlement Agreement prior to signing the Agreement.

KENNETH HAMILTON

Teaberry, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

DATE

DATE

² If the circumstances warranted, KDMM would also retain the right to file a separate action with the Commission seeking other penalties against the Respondent for his actions.